



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2023-0092; FRL-10674-02-R9]

### Air Plan Revisions; California; Eastern Kern Air Pollution Control District; Oxides of Nitrogen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Eastern Kern Air Pollution Control District (EKAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) from stationary gas turbines. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and identifies deficiencies with the rule that must be corrected for the EPA to grant full approval of the rule.

**DATES:** This rule is effective [Insert date 30 days after date of publication in the *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2023-0092. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who

needs a reasonable accommodation at no cost to you, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at *evanshopper.lakenya@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## I. Proposed Action

On March 29, 2023 (88 FR 18496), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
EKAPCD	425	Stationary Gas Turbines (Oxides of Nitrogen)	01/11/18	05/23/18

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

1. Relaxation of NO<sub>x</sub> limits for the Westinghouse W251B10 turbine in section (V)(B) has not been sufficiently justified as meeting the Reasonably Available Control Technology (RACT) requirement and was not accompanied by sufficient explanation as to why the change does not interfere with attainment of the National Ambient Air Quality Standards (NAAQS) or reasonable further progress.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from a member of the public. The full text of this comment is available in the docket for this rulemaking. The comment does not indicate disagreement with the EPA's proposal, and instead raises two questions: how do changes to emissions of stationary gas turbines affect the output of the turbines, and what are the costs and benefits of the proposed rule change? The EPA notes that information surrounding the impact of the proposed changes to the rule, including information about economic costs and benefits and air quality impacts, are included in the District's staff report accompanying the Rule's submission, and included in the docket for this rulemaking. The EPA notes in particular, the District's analysis of energy impacts in part IX.D. of the Staff Report.<sup>1</sup> The District reports that "[t]he use of NO<sub>x</sub> reduction technologies would generally have some level of fuel energy penalty or may require small amounts of energy for their operation."<sup>2</sup> The Staff Report provides a number of examples, and notes in particular that for selective catalytic reduction (SCR), "[t]he use of SCR results in a 0.7 percent fuel penalty." With respect to costs and benefits, it is expected that there are a range of costs and benefits associated with units of different sizes and layouts. The District did not provide detailed calculations of cost-effectiveness for different units, but did provide some discussion of the costs and benefits of the rule in sections VI – Cost Effectiveness and IX – Impacts. The District also noted that pursuant to state law, districts with a population under 500,000, such as Eastern Kern County, are exempt from the requirement to assess socioeconomic impacts of proposed rules.<sup>3</sup>

The comment does not raise concerns about the EPA's proposed rulemaking and does not

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<sup>1</sup> Rule 425 – Stationary Gas Turbines (Oxides of Nitrogen): Final Staff Report, January 11, 2018. (Staff Report)

<sup>2</sup> Id. at 14.

<sup>3</sup> Id. at 3.

suggest that the EPA should not finalize its action as proposed. The comment also does not indicate that the submission fails to comply with any relevant requirement of the Clean Air Act. After reviewing this comment, the EPA has determined that the comment is not adverse to our proposed finding that EKAPCD Rule 425 satisfies the requirements of CAA sections 110 and part D, which focuses the rule evaluation on enforceability, stringency, and interference with CAA requirements, and does not change our evaluation of the submitted rule.

### **III. EPA Action**

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

As a result, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

Note that the submitted rule has been adopted by the EKAPCD, and the EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

*<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>*.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of EKAPCD Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), amended January 11, 2018, which regulates NO<sub>x</sub> and CO for stationary gas turbine engines with ratings equal to or greater than 0.88 MW. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders can be found at *<https://www.epa.gov/laws-regulations/laws-and-executive-orders>*.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does

not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action is finalizing a limited approval and limited disapproval of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this

action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: **June 7, 2023**.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*



For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

### **Subpart F – California**

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(B)(5) and (c)(518)(i)(F) to read as follows:

#### **§52.220 Identification of plan – in part.**

\* \* \* \* \*

(c) \* \* \*

(194) \* \* \*

(i) \* \* \*

(B) \* \* \*

(5) Previously approved on March 1, 1996, in paragraph (c)(194)(1)(B)(2) of this section and now deleted with replacement in (c)(518)(i)(F)(1): Rule 425, adopted on August 16, 1993.

\* \* \* \* \*

(518) \* \* \*

(i) \* \* \*

(F) Eastern Kern Air Pollution Control District.

(1) Rule 425, “Stationary Gas Turbines (Oxides of Nitrogen),” amended on January 11, 2018.

(2) [Reserved]

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[FR Doc. 2023-12635 Filed: 6/14/2023 8:45 am; Publication Date: 6/15/2023]